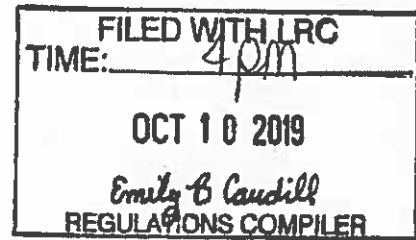


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1 FINANCE AND ADMINISTRATION CABINET

2 Department of Revenue

3 Office of Property Valuation

4 (New Administrative Regulation)

5 103 KAR 8.170 Pollution control facilities exemption.

6 RELATES TO: KRS 13B, 132.020, 132.200, 224.01-300, 224.1-310

7 STATUTORY AUTHORITY: KRS 131.130, 224.1-310

8 NECESSITY, FUNCTION, AND CONFORMITY: KRS 131.130(1) authorizes the
9 Department of Revenue to promulgate administrative regulations necessary for the administration
10 and enforcement of all tax laws in Kentucky. This administrative regulation establishes the
11 administrative process for obtaining and using the pollution control tax exemption certification
12 pursuant to KRS 224.1-310.

13 Section 1. Definitions. (1) "Date of the making of the application" means the postmark date,
14 electronic submission date, or date hand-stamped by the department for the "Application for
15 Pollution Control Tax Exemption Certificate", Form 61A216.

16 (2) "Pollution control facility" is defined by KRS 224.1-300(1).

17 Section 2. Application process for certification. (1) An applicant shall:

18 (a) File an "Application for Pollution Control Tax Exemption Certificate", Form 61A216;

19 (b) Submit a copy of the plans or blueprints and a materials and equipment listing with the
20 application;

21 (c) Provide a detailed explanation of what types of pollution control (water, waste, noise, air,

1 or substance removal) a project addresses and how the primary function of the property installed
2 is to control pollution as required under KRS 224.1-300;

3 (d) Provide costs of the materials and equipment that the exemption is requested; and

4 (e) Provide any other information required or requested by the Department based on the nature
5 of the project to ensure compliance with KRS 132.020, 132.200, and 224.1-300.

6 (2) Each "Application for Pollution Control Certificate" shall be specific to a project and
7 location and shall not be a blanket certification for all operations of the applicant.

8 Section 3. Certificate issuance, denial, and revocation procedures. (1) Issuance, Denial, or
9 revocation of pollution control tax exemption.

10 (a) Before the Department issues or denies, in whole or in part, the "Application for Pollution
11 Control Tax Exemption Certificate," the Department shall issue a written notice with an
12 explanation of the issuance or denial to the applicant and the Secretary of the Energy and
13 Environment Cabinet.

14 (b) If the Department revokes a pollution control exemption tax certificate, the Department
15 shall issue a written notice with an explanation of the revocation to the holder of the certificate and
16 the Secretary of the Energy and Environment Cabinet.

17 (c) If aggrieved by the issuance, denial, or revocation of pollution control tax exemption, the
18 Energy and Environment Cabinet, the applicant for the pollution control exemption certificate, or
19 the holder of the pollution exemption certificate may request a hearing before the Department
20 pursuant to Section 4.

21 (2) Certificate issuance. (a) The Department shall issue a qualifying applicant a "Pollution
22 Control Tax Exemption Certificate", Form 61A217, upon final approval. The effective date of
23 the certificate shall be the date of making the application to the Department pursuant to KRS

1 224.1-310(1).

2 (b) "Pollution Control Tax Exemption Certificate", Form 61A217, shall replace "Pollution
3 Control Tax Exemption Certificate", Form 51A226.

4 1. "Pollution Control Tax Exemption Certificate", Form 51A226 issued prior to January 1,
5 2019, shall be a valid pollution control tax exemption certificate for purposes of KRS 224.1-300,
6 132.020, and 132.200 unless either of the following applies:

7 a. The certificate is revoked by the Department; or

8 b. The pollution control facility that an exemption certificate is no longer primarily used for
9 pollution control.

10 2. Beginning January 1, 2019, a valid pollution control tax exemption certificate for purposes
11 of KRS 224.1-300, 132.020, and 132.200 shall be issued on the "Pollution Control Tax Exemption
12 Certificate", Form 61A217.

13 Section 4. Administrative hearing procedures. (1) If aggrieved by the notice of acceptance;
14 denial, in whole or in part; or revocation of a pollution control exemption tax certification, the
15 Energy and Environment Cabinet, the applicant for the pollution control exemption certificate, or
16 the holder of the pollution exemption certificate may file a written request for a hearing pursuant
17 to KRS 224.1-310 with the Commissioner of the Department of Revenue within thirty (30) days
18 from the date the notice was mailed.

19 (2) If a timely written request for hearing is received by the Commissioner of the Department
20 of Revenue, the Commissioner shall assign a time and place for the hearing and shall appoint a
21 hearing officer to conduct the hearing, receive evidence, and hear arguments pursuant to the
22 requirements of KRS Chapter 13B.

23 (3) The hearing officer shall file a written recommended order pursuant to KRS 13B.110 with

1 the Commissioner of the Department of Revenue no later than sixty (60) days after receiving a
2 copy of the official record of the proceeding. The recommended order shall contain a
3 recommendation for the issuance, revocation, or denial, in whole or in part, of the pollution control
4 tax exemption certificate.

5 (4) The Commissioner of the Department of Revenue shall issue a final order pursuant to KRS
6 13B.120 within ninety (90) days after the submission of the hearing officer's recommended order,
7 issuing, denying in whole or in part, or revoking the pollution control tax exemption certificate.

8 (5) Any party to the hearing aggrieved by the issuance of the Department's final order may
9 appeal the issuance, revocation, or denial, in whole or in part, of the pollution control tax
10 exemption certificate within thirty (30) days from the date of the mailing of the Department's final
11 order to the Kentucky Claims Commission pursuant to KRS 49.220.

12 Section 5. Forms. (1) The "Application for Pollution Control Tax Exemption Certificate",
13 Form 61A216, listed herein may be inspected, copied, or obtained, subject to applicable copyright
14 law, at:

15 (a) The Kentucky Department of Revenue, 501 High Street, Frankfort, Kentucky 40620;

16 (b) At a Kentucky Taxpayer Service Center during business hours; or

17 (c) On the Department website at <http://revenue.ky.gov>.

18 (2) The "Pollution Control Tax Exemption Certificate", Form 61A217, shall be issued by the
19 Department upon final approval of the application.

103 KAR 8:170

APPROVED BY AGENCY:

Daniel Bork
DANIEL P. BORK, COMMISSIONER
Department of Revenue
Finance and Administration Cabinet

Oct 10, 2019
Date

PUBLIC HEARING AND PUBLIC COMMENT PERIOD

A public hearing on this administrative regulation shall be held on December 27, 2019, at 10:00 a.m. in Room 9B, State Office Building, 501 High Street, Frankfort, KY 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through December 31, 2019. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Lisa Swiger, Tax Policy Research Consultant II, Department of Revenue, 501 High Street, Station 1, Frankfort, Kentucky, 40601, (502) 564-9526 (telephone), (502) 564-3875(fax), Lisa.Swiger@ky.gov (email).

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Regulation No. 103 KAR 8:170

Contact Person: Lisa Swiger
Phone Number: (502) 564-9526
Email: Lisa.Swiger@ky.gov

(1) Provide a brief summary of:

(a) What this administrative regulation does: Establishes a new ad valorem tax regulation that outlines the administrative process for obtaining and using the pollution control tax exemption certification as authorized under KRS 224.1-310 due to the repeal of the Sales and Use Tax 103 KAR 30:260.

(b) The necessity of this administrative regulation: This administrative regulation is necessary due to the repeal of 103 KAR 30:260. KRS 139.480 was amended to delete the sales and use tax exemption for pollution control facilities. KRS 132.200 allows for a pollution control exemption for ad valorem property taxes, and thus, this administrative regulation will clarify the process to obtain the exemption.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The proposed regulatory language conforms with KRS 13A, KRS 131.130, KRS 131.131 and KRS 224.1-310.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The proposed administrative regulation outlines the administrative process for the issuance, denial, and revocation of the pollution control exemption certificate, as well as the administrative hearing and appeals process, creating a uniform process.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: N/A

(b) The necessity of the amendment to this administrative regulation: N/A

(c) How the amendment conforms to the content of the authorizing statutes: N/A

(d) How the amendment will assist in the effective administration of the statutes: N/A

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Any taxpayer who may apply for a pollution control exemption certificate may be impacted by this administrative regulation. The number of industries or taxpayers this may include is unknown, as the Department of Revenue does not know the potential applicants.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: In order to receive the exemption, they will have to apply for the exemption certificate.

(b) In complying with this administrative regulation or amendment, how much will it cost

each of the entities identified in question (3): Cost should be minimal, if any, associated with the cost of filing the application.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): They will be entitled to the pollution control exemption for local ad valorem property tax and a reduced state rate tax for ad valorem property tax.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:

(a) Initially: There is no expected cost to implement the proposed amendment. Current staff and budgeted funding will absorb the implementation of this administrative regulation.

(b) On a continuing basis: There is no cost expected on a continual basis.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Current departmental staff and funding will be used to implement and enforce this proposed amendment.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No additional funding or increase in fees is needed.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: No fees are directly or indirectly established or increased by the proposed amendment.

(9) TIERING: Is tiering applied? (Explain why or why not): Tiering is not applicable as the proposed amended regulation will be applied equally to all entities impacted by it.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

Regulation No. 103 KAR 8:170

Contact Person: Lisa Swiger
Phone Number: (502) 564-9526
Email: Lisa.Swiger@ky.gov

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Finance and Administration Cabinet, Department of Revenue.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 13A, KRS 131.130, KRS 131.131 and KRS 224.1-310.

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? No revenues are expected to be generated by the provisions of this administrative regulation.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? None.

(c) How much will it cost to administer this program for the first year? No additional costs will be incurred in the first year of this regulation being in effect. Any costs will be incurred as normal operating expenditures of the Department of Revenue.

(d) How much will it cost to administer this program for subsequent years? No additional costs will be incurred in subsequent years.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation: